



DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

Docket No.: 110822526-1715-02

RIN 0691-AA80

Direct Investment Surveys: BE-12, Benchmark Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to set forth the reporting requirements for the 2012 BE-12, Benchmark Survey of Foreign Direct Investment in the United States. The BE-12 survey is conducted every five years; the prior survey covered 2007. The benchmark survey covers the universe of foreign direct investment in the United States, and is BEA's most detailed survey of such investment. For the 2012 benchmark survey, BEA is changing reporting thresholds and data items collected, as well as changing the names and design of the survey forms. The changes are intended to align the data collection program for multinational companies with available resources and align the statistics on multinational companies with recent changes in financial accounting standards and international statistical standards.

DATES: This final rule will be effective [insert date 30 days after publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: David H. Galler, Chief, Direct Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; e-mail *David.Galler@bea.gov* or phone (202) 606-9835.

SUPPLEMENTARY INFORMATION: On September 21, 2011, BEA published a notice of proposed rulemaking that set forth revised reporting criteria for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States (76 FR 58420-58424). No comments on the proposed rule were received. Thus the proposed rule is adopted without change. This final rule amends 15 CFR Part 806.17 to set forth the reporting requirements for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States.

The BEA conducts the BE-12 survey under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108), hereinafter, “the Act.” Section 3103(b) of the Act provides that “with respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter.”

The benchmark survey covers the universe of foreign direct investment in the United States in terms of value, and is BEA’s most detailed survey of such investment. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person (foreign parent) of ten percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of U.S. affiliates, and on positions and transactions between U.S. affiliates and their foreign parent groups (which are defined to include all foreign parents and

foreign affiliates of foreign parents). These data are needed to measure the size and economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy. Such data are generally found in enterprise-level accounting records of respondent companies. These data are used to derive current universe estimates of direct investment from sample data collected in other BEA surveys in nonbenchmark years. In particular, they serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and national income and product accounts, and for annual estimates of the foreign direct investment position in the United States and of the operations of the U.S. affiliates of foreign companies.

BEA will make the survey available via eFile, BEA's electronic filing system, in March 2012, for the convenience of respondents who may wish to file as soon as their 2012 fiscal year ends. BEA will send printed survey forms to potential respondents in March 2013; responses will be due by May 31.

Description of Changes

The changes revise the regulations and the survey forms for the BE-12 benchmark survey. These amendments include changes in reporting thresholds and data items collected, as well as changes in the names and design of the survey forms. Several of these amendments are part of a larger program to align the data collection program for multinational companies with available resources.

Under the revised regulations, U.S. affiliates report their information, regardless of industry, on one of four forms—BE-12A, BE-12B, BE-12C, or BE-12 Claim for Not Filing. Data on U.S. affiliates that are banks, bank holding companies, or financial holding companies are collected on the same survey forms as data on other U.S. affiliates.

The amount of information required to be reported by each U.S. affiliate is determined by the size of the affiliate's assets, sales or gross operating revenue, and net income. The reporting requirements for the four forms are—

(a) Form BE-12(A)—Report for majority-owned U.S. affiliates with total assets, sales or gross operating revenues, or net income greater than \$300 million, positive or negative.

(b) Form BE-12B—Report for majority-owned U.S. affiliates with total assets, sales or gross operating revenues, or net income greater than \$60 million, positive or negative, but not greater than \$300 million, positive or negative, and minority-owned U.S. affiliates with total assets, sales or gross operating revenues, or net income greater than \$60 million, positive or negative.

(c) Form BE-12(C)—Report for U.S. affiliates with total assets, sales or gross operating revenues, or net income less than or equal to \$60 million, positive or negative. The smallest U.S. affiliates—those with total assets, sales or gross operating revenues, or net income less than or equal to \$20 million, positive or negative—file only a few items on Form BE-12(C).

(d) Form BE-12 Claim for Not Filing—Report to be filed by U.S. persons who are not subject to the reporting requirements for the BE-12 benchmark survey, but have been contacted by BEA concerning their reporting status.

In addition to the changes in the reporting criteria, BEA hereby adds and deletes some items on one of the benchmark survey forms. The following items are added to Form BE-12A (no additions are made to the other BE-12 forms):

(1) Questions are added regarding the use of fair value accounting on the balance sheet. Companies that indicate that they used fair value accounting are asked to provide the amount of: net property, plant, and equipment; of total assets; and of total liabilities recorded at fair value.

(2) Questions are added to collect information on assets, liabilities, and interest receipts and payments that are related to banking activities.

(3) Several check-box questions are added asking whether U.S. affiliates purchased contract manufacturing services from others or performed contract manufacturing services for others. They are also asked whether they owned the materials used in contract manufacturing and if the company that performed or purchased the service was located in the United States or abroad.

(4) A question is added asking if the U.S. affiliate has equity in its foreign parent(s) (reverse investment). An item is added to collect voting percentage, equity percentage, and the dollar amount of the investment.

(5) Several check-box questions are added to ensure that certain types of finance companies do not report intercompany debt to BEA that is already reported on Treasury International Capital surveys.

BEA also eliminates the following items from the benchmark survey: selected balance sheet items (BE-12A); the breakdown of sales of services to foreign persons into sales of services to the foreign parent group, to foreign affiliates owned by the affiliate, and to other foreign persons (BE-12A); the breakdown of employment and employee compensation by occupational classification (BE-12A, BE-12B); the breakdown of total employee compensation into wages and salaries and employee benefit plans (BE-12A); data on the composition of external finances (BE-12A); manufacturing employment by state (BE-12A, BE-12B); gross property, plant, and equipment by state (BE-12A, BE-12B); commercial property by state (BE-12A, BE-12B); the location of the primary U.S. headquarters of the U.S. affiliate (BE-12A, BE-12B, BE-12C); number of employees covered by collective bargaining agreements (BE-12A); acres of U.S. land owned (BE-12A, BE-12B, BE-12C); basis (shipped or charged) for trade data (check-box questions) (BE-12A); exports/imports shipped to/by foreign affiliates owned by U.S. affiliate by country of origin/destination (as in the benchmark surveys for 2002 and earlier years, these columns will be combined with the columns

“shipped to/by all other foreign persons;” BE-12A); and withholding taxes on intercompany interest payments and interest receipts (BE-12A).

In addition, BEA renames and redesigns the survey forms. The new design incorporates improvements made to other BEA surveys. Survey instructions and data item descriptions are changed to improve clarity, make the benchmark survey forms more consistent with those of other BEA surveys, and provide updated information on accounting standards.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

The collection of information in this final rule has been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). OMB approved the information collection under OMB control number 0608-0042.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection displays a currently valid OMB control number.

The BE-12 survey is expected to result in the filing of reports from approximately 19,950 U.S. affiliates. The respondent burden for this collection of information will vary from one company to another, but is estimated to average 9.7 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total respondent

burden for this survey is estimated at 194,150 hours, compared to 209,650 hours for the previous (2007) benchmark survey. The decrease in burden hours is due to a reduction in the number of data items on the form which reduces the average burden per form, and increased reporting thresholds which allow more respondents to file on shorter forms.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the final rule should be sent to both BEA via e-mail at *David.Galler@bea.gov* or by FAX at (202) 606-2894, and to OMB, O.I.R.A., Paperwork Reduction Project 0608-0042, Attention PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov* or by FAX at (202) 395-7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, certified at the proposed rule stage to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding the certification or the economic impact of the rule more generally. No final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 806

Economic statistics, Foreign investment in the United States, International transactions, Penalties, Reporting and record keeping requirements.

Dated: November 28, 2011

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806--DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101- 3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.17 is revised to read as follows:

§ 806.17 Rules and regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2012.

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States, will be conducted covering 2012. All legal authorities, provisions, definitions, and requirements contained in § 806.1 through § 806.13 and § 806.15(a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE-12 survey are given in this section.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2012, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond pursuant to § 806.4. This may be accomplished by:

(1) Certifying in writing, by the due date of the survey, to the fact that the person is not a U.S. affiliate of a foreign person and not subject to the reporting requirements of the BE-12 survey.

(2) Completing and returning the “BE-12 Claim for Not Filing” by the due date of the survey; or

(3) Filing the properly completed BE-12 report—Form BE-12A, Form BE-12B, or Form BE-12C—by May 31, 2013;

(b) *Who must report.* A BE-12 report is required for each U.S. affiliate, that is, for each U.S. business enterprise in which a foreign person (foreign parent) owned or controlled, directly or indirectly, 10 percent or more of the voting securities in an incorporated U.S. business enterprise, or an equivalent interest in an unincorporated U.S. business enterprise, at the end of the business enterprise’s fiscal year that ended in calendar year 2012. A BE-12 report is required even if the foreign person’s ownership interest in the U.S. business enterprise was established or acquired during the 2012 reporting year.

(c) *Forms to be filed.* (1) Form BE-12A must be completed by a U.S. affiliate that was majority-owned by one or more foreign parents (for purposes of this survey, a “majority-owned” U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent), if on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the following three items for the U.S. affiliate (not just the foreign parent’s share), was greater than \$300 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2012:

(i) Total assets (do not net out liabilities);

(ii) Sales or gross operating revenues, excluding sales taxes; or

(iii) Net income after provision for U.S. income taxes.

(2) Form BE-12B must be completed by:

(i) A majority-owned U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent's share), was greater than \$60 million (positive or negative) but none of these items was greater than \$300 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2012.

(ii) A minority-owned U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent's share), was greater than \$60 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2012. (A "minority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less.)

(3) Form BE-12C must be completed by a U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, none of the three items listed in paragraph (c)(1) of this section for a U.S. affiliate (not just the foreign parent's share), was greater than \$60 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2012.

(4) BE-12 Claim for Not Filing will be provided for response by persons that are not subject to the reporting requirements of the BE-12 survey but have been contacted by BEA concerning their reporting status.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately on the same type of

report that would have been required if the real estate holdings were aggregated.

(e) *Due date.* A fully completed and certified Form BE-12A, BE-12B, BE-12C, or BE-12 Claim for Not Filing is due to be filed with BEA not later than May 31, 2013.

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